Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket 96-45
Universal Service	)	

Comments of TCA, Inc. – Telcom Consulting Associates

I. INTRODUCTION AND SUMMARY

TCA, Inc. - Telcom Consulting Associates ("TCA") hereby submits these comments in response to the Public Notice[1] issued in the above-captioned proceeding.

TCA is a consulting firm that performs financial, regulatory, management, and marketing services for over eighty small, rural local exchange carriers (LEC) throughout the United States. TCA's clients are rate-of-return regulated rural local exchange carriers (RLECs) and therefore will be directly impacted by the FCC's actions in this proceeding. These comments address the concerns of TCA's RLEC clients.

This current Joint Board proceeding[2] continues the important task started in 1998 with the establishment of the Rural Task Force (RTF). In the first RTF proceeding, the FCC responded correctly to the need for reliability in this nation's universal service policy as it related to areas served by rural LECs (RLEC) and continued with an embedded cost-based system that allowed for a measure of stability in universal service funding. It is time once again for the Commission to ensure universal service in the most sparsely populated and highest cost areas of the country is maintained. However, the current universal service issues are complicated by many other factors, each of which in inexorably intertwined with decisions to be made in this proceeding.

TCA urges the Commission to consider carefully any changes made to the current RLEC universal service support mechanism. Included in this proceeding should be a "fresh look" at the 1996 Act's universal service mandates, changes made to universal programs since 1996, the

[1] *Federal-State Joint Board on Universal Service seeks comment on certain of the Commission's rules relating to high-cost universal service support,* CC Docket 96-45 (FCC 04J-2), released August 16, 2004 (*Public Notice*)
[2] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order (FCC 01-125), released June 28, 2004 (*Referral Order*)

work of the RTF, and whether any success has been achieved as the result of post-1996 changes to support mechanisms. Of special importance will be the Commission's analysis of why changes are necessary, or whether the universal service support mechanisms designed for areas served by RLECs are indeed working as intended and as required.

TCA strongly believes that major changes to universal service mechanisms are not needed at this time. Even if the Commission determines that major changes are needed, it must wait until other issues are resolved, such as intercarrier compensation reform, treatment of IP-enabled services, and broadband regulation, or the Commission runs the risk of missing an opportunity to comprehensively address all regulatory changes needed in this ever-changing telecommunications marketplace.

II. MAJOR CHANGES TO UNIVERSAL SERVICE MECHANISMS FOR RLEC AREAS ARE NOT NEEDED

The first test that must be passed before embarking on the path of major change to universal service mechanisms is whether such changes are actually needed. In order to assess this critical test, the Commission must review the purpose of universal service, as written in the Telecommunications Act of 1996. These universal service principles are well documented and have been debated thoroughly, but are worth another look in the context of what the Joint Board and Commission must accomplish in this proceeding.

- **Quality and Rates**. Quality services should be available at just, reasonable, and affordable rates.[3]
- **Access to Advanced Services**. Access to advanced telecommunications and information services should be provided in all regions of the nation.[4]
- **Access in Rural and High Cost Areas**. Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to those services provided in urban

[3] 47 U.S.C. § 254 (b)(1)
[4] 47 U.S.C. § 254 (b)(2)

areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[5]

- **Equitable and Nondiscriminatory Contributions**. All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.[6]
- **Specific and Predictable Support Mechanisms**. There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.[7]
- **Access to Advanced Telecommunications Services for Schools, Health Care, and Libraries**. Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).[8]
- **Additional Principles**. Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.[9]

A. Quality Services at Just and Reasonable Rates are Available in Most Areas

According to the FCC's latest report on telephone subscribership in the United States, telephone subscribership penetration rate for March 2004 was 94.2%.[10] While the penetration rate for the March report was down from the November 2003 report, the trends demonstrate that universal service penetration currently hovers around the all-time high[11]. A conclusion that can be drawn from examining this data is that the focus should be on maintenance of universal service, which means sufficient and predictable funding must remain in order to keep customer rates affordable.

Several of the proposals made by the Joint Board would threaten the ability of the FCC to maintain universal service, especially in the high cost areas served by RLECs. For example, averaging costs at the statewide level[12], such as is done currently for non-rural carriers, would

[5] 47 U.S.C. § 254 (b)(3)
[6] 47 U.S.C. § 254 (b)(4)
[7] 47 U.S.C. § 254 (b)(5)
[8] 47 U.S.C. § 254 (b)(6)
[9] 47 U.S.C. § 254 (b)(7)
[10] "*Telephone Subscribership in the United States*" report, released August 2004
[11] *Id*, Table 1
[12] *Public Notice*, ¶ 44

spell certain disaster for universal service in RLEC areas. Even though the Joint Board appears to recognize that a support methodology such as the statewide averaging of costs could have a substantial adverse impact on universal service support[13], the extent of such an impact is given little consideration. As the Joint Board is aware, the RTF performed an exhaustive analysis of the impact of the non-rural support methodology were it applied to rural carriers[14]. At that time, the RTF found that applying the non-rural methodology to the rural carrier support system would result in a 71% decrease in available universal service support.[15] Furthermore, the RTF estimated that support would be limited to rural carriers operating in 16 states[16], instead of all 50 states as is the case currently. TCA will examine this issue further below; however, it is clear from the RTF's analysis that the statewide averaging of costs is not a viable alternative for a support methodology for areas served by RLECs.

B. Advanced Services are Becoming Increasingly Available in Rural Areas

According to the FCC's latest analysis, advanced services are becoming increasingly available in all areas of the country, including rural areas.[17] Although there are many factors contributing toward this increased availability of advanced services, one of the factors must be attributed to the current RLEC universal service methodology. Even though "advanced services", in and of themselves, are not included in the current definition of supported services[18], universal service support available in rural areas does provide for a means of funding the backbone infrastructure necessary to provide advanced services. The FCC recognized this fact when it stated "…although the high-cost loop support mechanism does not support the provision of advanced services, our policies do not impede the deployment of modern plant capable of providing access to advanced services."[19] In making this statement, the FCC is adopting the RTF's "no barriers" policy to advanced services, which recognizes that the current embedded cost-based mechanisms for rural carriers "inherently provides incentives for the infrastructure

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[13] *Id*, ¶ 41 and footnote 49
[14] *See* Rural Task Force White Paper 4, issued September 20, 2000
[15] *Id*, page 6. The RTF's analysis showed a reduction in RLEC support of $1,102 million out of total RLEC support, at that time, of $1,553 million.
[16] *Id*, page 17.
[17] *See Fourth Report on Broadband Availability*, News Release, dated September 9, 2004
[18] *See* 47 C.F.R. § 54.101
[19] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order (*RTF Order*), at ¶ 200

investments necessary for providing universal service."[20] TCA strongly urges the Joint Board and FCC to continue with this rationale policy, and ensure the RLEC mechanism adopted does not present any barriers to the continued deployment of advanced service-capable facilities.

C. It is Crucial that Access to Universal Service in Rural and High Cost Areas Continues to be Available.

Of utmost importance to the Joint Board and FCC in this proceeding is the principle that consumers in rural and high cost areas of the country continue to enjoy access to quality services at rates that are comparable to those charged in urban areas. There has been substantial success under the mechanism put in place since 1996, and especially with the interim under which rural LECs currently operate, in making sure consumers living in the high cost, rural areas served by RLECs have access to services at rate that are comparable to what is available in urban areas. However, RLEC customers have experience increased charges, in the form of higher end user common line charges and, in many instances, higher basic local service rates. While regulators can and should continue to utilize the current Lifeline program to ensure the lowest income consumers have direct assistance for higher local rates, universal service is still vital in ensuring RLECs can continue to invest in the network capable of bringing high quality services while offering affordable rates. The challenge for the Joint Board and the FCC will be to ensure the success in meeting this universal service principle is not threatened by the need, real or perceived, to overhaul the universal service support system for rural telephone companies.

D. The Joint Board and FCC Must, Once and For All, Adopt a Permanent, Specific and Predictable Support Mechanism for Rural Telephone Companies.

This will be the third attempt at developing a permanent universal service mechanism for rural telephone companies. It will be imperative for the Joint Board to recommend and the FCC to adopt a RLEC support mechanism that provides for substantial stability well into the future. RLECs have been awaiting change in the support mechanism for eight years, which makes it difficult to plan and invest with the future in mind. The FCC has an opportunity in this proceeding to adopt such a mechanism, to the extent possible.

The Joint Board must be especially cautious in meeting the "sufficient" standard. Many of the proposals being contemplated, or that will be suggested by parties in this proceeding, will

[20] *Rural Task Force Recommendation*, page 22

sorely test the sufficiency of USF. In particular, the proposal to average per line costs at the state level will severely conflict with any reasonable definition of "sufficient." In addition, continued funding of two or more networks in areas where it is prohibitively expensive to ensure a carrier last resort could also violate the sufficiency standard.

III. Universal Service Can Not be Used to Incent Competition

Of course, many of the perceived problems with today's rural LEC universal service mechanism can be attributed to the attempt by the FCC and state commissions to lure competition to rural LEC areas by designating additional eligible telecommunications carriers (ETCs). It is quite likely that, absent the growth in competitive ETC USF demand, the RTF plan would be adopted as a permanent mechanism. Unfortunately, the desire to incent competition with the grant of USF support has led us into dire straits. However, it is not too late to reverse this trend and properly recognize that competition may, and in many cases will, not work in rural telephone company areas.

The attempts by some parties to equate "economic efficiency" to universal service is likewise an exercise in futility. As was so succinctly stated in a joint filing made by NTCA and OPASTCO, "economic efficiency does not necessarily result in universal service."[21] This same paper draws the conclusion that "if competition naturally led to universal service, then the universal service provisions of the Act would be unnecessary."[22] It is this failed attempt at the so called balancing act between competition and universal service that has led to numerous proposals to "reform" a system that, absent the improper subsidization of competition, would be considered to be working properly.

Nowhere is the improper subsidization of competition and the adverse impact on the universal service system more glaring than with the provision of support to cellular telephone providers. Support is being paid to cellular providers for doing nothing more than submitting line counts to USAC. Oftentimes, the cellular carrier's only rationale for being allowed access to the scare support fund is that they will better be able to expand their wireless offerings in rural areas. The incentive provided is perverse, and the outcome is predictable. Once the proverbial USF floodgates were opened, numerous wireless CETCs lined up at the support trough. Therefore, TCA urges the Joint Board and FCC to hault the improper flow of support to cellular

[21] See *Ex Parte* notice, filed by NTCA and OPASTCO in Docket 96-45 on August 12, 2003 ("*Universal Service and the Myth of the Level Playing Field*", by Dale Lehman), page 3.
[22] *Id.*

companies. If it is decided that it is in the public interest to fund ubiquitous wireless service, perhaps a separate and distinct funding mechanism needed. TCA is not the only party that believes the universal service mechanism in place today should not be used to provide for universal wireless service.[23]

IV. Universal Service Support in Rural Areas

One of the most troubling aspects of the contemplated changes to the current interim (RTF) plan is the statewide averaging of costs – only states with average costs above the national average loop cost receive universal service support. As discussed above, this type of methodology would have disastrous consequences for consumers in rural LEC areas. It is highly recommended that the Joint Board and/or the FCC refresh the record as to the impact on RLEC support before considering such a proposal.

A support methodology that uses statewide average costs, such as the current non-rural carrier mechanism utilizes, could very well violate the "sufficient and predictable" principle. First, support levels for RLECs would be severely reduced. Second, the effects of such reductions would be left for the individual states to handle. TCA has analyzed the likely impact of a statewide average cost methodology on the state of Kansas. For this analysis, it is assumed that the RTF analysis referenced above remains accurate; thus, the state of Kansas would have an average statewide cost per loop at such a level that no carrier operating in the state would receive federal universal service support. According to the most recently available USAC projections, rural carriers in Kansas are scheduled to receive approximately $123 million in annual support. Assuming 100% of this support would be lost, this amount translates into, on average, $39 per loop per month. One of two things can happen when this support is lost; 1) RLECs would have to raise rates by $39 per month, or 2) the state of Kansas would have to provide replacement support. Adding $123 million to the current Kansas Universal Service Fund (KUSF), would cause a substantial increase in the assessment necessary to fund the KUSF – about a 194% increase[24]. Plainly, this result is not in the interest of universal service in this country.

[23] See Reply Comments of AT&T Corp, CC Docket No. 96-45, filed September 21, 2004, at ii "*To the extent that the Commission wants to provide further inducements for wireless entry in rural areas, its [sic] should set up a new funding mechanism that would operate entirely independently of the existing High Cost Support mechanisms, or pursue such incentives through other means*."

V. Support for Transferred Exchanges

The Joint Board asks whether the Commission should retain, repeal, or further modify Section 54.305 of its rules, which relates to the amount of support for transferred exchanges.[25] As noted, the Commission revised its 54.305 rules to add a "safety valve" mechanism that would allow acquiring carriers to receive universal service support above and beyond what 54.305 allowed[26]. TCA believes Section 54.305 of the Commission's rules should be repealed in its entirety.

Section 54.305's constraint on the level of support transferred with acquired exchanges, while perhaps instituted with good reason, actually has provided disincentive for rural LECs to purchase exchanges from larger companies. In many instances, the proposed sale of exchanges to a RLEC would also entail substantial network upgrades in order to, among other things, provide for advanced service capabilities. Unfortunately, Section 54.305 would ensure the acquiring RLEC would receive little or no support[27], regardless of how much is spent post-acquisition. This impact in turn ensures that rural customers served by non-rural carriers will not have access to the high quality services offered by rural telephone companies.[28]

The Safety Valve mechanism adopted by the FCC serves to alleviate the draconian measures contained in Section 54.305. Unfortunately, the Safety Valve mechanism serves only to minimally offset 54.305(a) – support is provided for 50% of what would have ordinarily been generated related to upgrades made to the purchased exchanges. In addition, there is a substantial delay in the time after the sale of exchanges is consummated and when Safety Valve support commences, caused by the requirement to measure data from a calendar index year.

TCA urges the Joint Board to consider recommending that the FCC repeal Section 54.305, as other mechanisms exist to ensure support for upgrading exchanges does not materially impact the overall HCLS fund. For example, the traditional study area waiver process, used when a carrier wishes to include acquired exchanges in its established study area, can and has been used to ensure the proposed transaction would not have a materially adverse impact on the

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[24] The current KUSF level is approximately $63 million.
[25] Public Notice, ¶ 49
[26] 47 CFR § 54.305(b)
[27] In the case of non-rural carriers selling exchanges to RLECs, the support available under 54.305 suffers from two shortfalls: 1) the larger carrier's ability to spread costs over more customers, and 2) the current non-rural USF mechanism that limits support to only a few states.
[28] The RTF also addressed this issue – see RTF recommendation at p. 29: "*Customers in high cost rural exchanges involved in sale/transfer transactions should not be 'doomed' to poor service because they live in exchanges that have been involved in sale/transfer transactions where the previous owner had limited access to universal service support funds.*"

overall fund. In addition, if Section 54.305 were repealed, then the support generated by rural LECs upgrading acquired exchanges would be included in the HCLS mechanism, which is in essence capped.

VI. Conclusion

The Joint Board should carefully consider calls for major changes to the current universal service support system for areas served by rural telephone companies, and determine the reasons provided for such change. As TCA demonstrates above, substantial change will only serve to threaten the successful system of universal service support in place today, and the result will be to violate the universal service principles as contained in the 1996 Act. Instead, TCA believes the current RTF plan can and should continue beyond largely unaltered beyond June 30, 2006.

If change is ultimately seen as absolutely necessary, then the Joint Board and FCC should ensure all other related proceedings are resolved in concert with USF reform. Decisions made by regulators in any one of a number of issues, including intercarrier compensation reform and regulatory treatment of IP-enabled services, will have consequences in the formulation of universal service policy.

Respectfully submitted,

[electronically filed]

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